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7 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 MICHAEL MOI, an individual,
10 Plaintiff,

11 v.

12 CHIHULY STUDIO, INC., a Washington
corporation; DALE CHIHULY,
13 individually and as a married person;
LESLIE CHIHULY, individually and as a
14 married person,
15 Defendants.

No. 2:17-cv-00853

MOTION TO FILE DOCUMENT UNDER
SEAL (COMPLAINT)

Note for Motion Calendar: June 16, 2017

16
17 **I. RELIEF REQUESTED**

18 Pursuant to W.D. Washington Local Civil Rule (“LCR”) 5(g), Defendants Chihuly, Inc.,¹
19 Dale Chihuly and Leslie Chihuly (collectively, “Defendants” or “Chihuly”) move to file under
20 seal Exhibit A to the Notice of Removal, which is a copy of a Complaint by Plaintiff Michael
21 Moi (“Plaintiff”) against Chihuly. Because Exhibit A contains information potentially
22 implicated by confidentiality agreements entered into by Chihuly and non-parties, Chihuly
23 requests a redacted version of the Complaint be made available to the public, a copy of which is
24 attached hereto as Attachment 1.

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26 ¹ There is no Washington corporate entity named “Chihuly Studio, Inc.” Chihuly Studio is a registered
trade name for Chihuly, Inc.

1 This motion is supported by the authorities set forth below and the Declaration of Harry
2 H. Schneider, Jr. in Support of Defendants’ Motion to File Document Under Seal (Complaint)
3 (“Schneider Decl.”).

4 II. FACTUAL BACKGROUND

5 Plaintiff Michael Moi (“Plaintiff”) served, but did not file, a Complaint and Summons on
6 Defendants on May 15, 2017. Schneider Decl. ¶ 2. Such service commenced the action
7 pursuant to Washington Court Rule 3(a) and RCW 4.28.020. Defendants filed the as-served
8 Complaint in the Superior Court of Washington in and for King County (“King County Superior
9 Court”) and promptly moved to seal the Complaint and replace the public version with a
10 redacted copy. *Id.* ¶¶ 3- 5.

11 The Complaint includes, among other things, causes of actions sounding in equitable
12 estoppel and federal copyright law based on factual allegations spanning nearly two decades.
13 *See* Dkt. No. 1, Ex. A (Compl.); Schneider Decl. ¶ 4. Given the exclusive federal jurisdiction
14 over copyright claims, Defendants removed the King County Superior Court Complaint. *See*
15 Dkt. No. 1 (Notice of Removal). Attached to the Notice of Removal as Exhibit A is a copy of
16 the Complaint. *Id.*

17 A portion of ¶ 3.26 of the Complaint—seven sentences in total out of twenty pages—
18 might be governed by agreements with non-parties and implicate the privacy interests of those
19 non-parties.

20 III. LEGAL AUTHORITY

21 The presumption of public access to court records ordinarily requires the moving party to
22 provide compelling reasons to seal a document. *Kamakana v. City & County of Honolulu*, 447
23 F.3d 1172, 1178 (9th Cir. 2006). Such compelling interest can be shown, inter alia, when such
24 “court files might have become a vehicle for improper purposes, such as the use of records to
25 gratify private spite, promote public scandal, circulate libelous statements, or release trade
26 secrets.” *Id.* (internal quotation and citation omitted).

1 The Ninth Circuit does not apply this presumption of access, however, when the material
2 to be sealed is attached to a non-dispositive motion, as here. *Id.* at 1178-79. Instead, a showing
3 of “good cause” under Rule 26(c) will suffice to seal such records. *Id.* at 1180; *see also Pintos v.*
4 *Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (applying a “good cause” standard to all
5 non-dispositive motions because such motions “are often unrelated, or only tangentially related,
6 to the underlying cause of action”). Rule 26(c) allows the Court to exercise its discretion “to
7 protect a party or person from annoyance, embarrassment, oppression, or undue burden or
8 expense.” Fed. R. Civ. P. 26(c).

9 The good cause standard should apply here as well, where the document to be redacted is
10 the Complaint and is not before the Court on any motion. Aside from this Motion seeking to
11 redact portions of a single paragraph of the twenty-page Complaint, there are no pending
12 motions before the Court. Defendants removed this Complaint from King County Superior
13 Court, and the Notice of Removal necessarily requires as an attachment the state court complaint.
14 Defendants removed the exact Complaint that was served on them, but moved in King County
15 Superior Court to redact the same information that they now request this Court to redact.
16 Schneider Decl. ¶ 5.

17 Moreover, the information sought to be redacted concerns non-parties to whom Chihuly
18 may have non-disclosure obligations. The public disclosure of the information might be
19 considered an unauthorized disclosure of confidential information in violation of the
20 confidentiality agreements. And, whether or not protected by such contracts, the information
21 relates to private aspects of the non-parties’ relationships that reasonable people would normally
22 wish to keep out of the public eye. Good cause exists to redact the Complaint to prevent the
23 annoyance, embarrassment and potential oppression on non-parties by disclosing details of their
24 relationships.

25 The redaction request is also narrowly tailored. *See* Attachment 1 (Complaint with
26 proposed redactions). Defendants seek to redact only a portion of a single paragraph in a 20-

1 page Complaint. Should these few sentences become relevant to a motion or issue before the
2 Court in the future, this redaction may be re-examined and re-briefed as necessary.

3 For these reasons, good cause exists to redact the Complaint.

4 **IV. CERTIFICATION**

5 Pursuant to LCR 5(g)(3)(A), counsel for Defendants (Harry Schneider) will be contacting
6 counsel for Plaintiff contemporaneously with the completion of the removal proceedings this
7 morning to meet and confer regarding the need to file the document under seal, to discuss
8 alternative redactions, and to explore other alternatives to sealing. It was not feasible or
9 advisable to contact Plaintiff's counsel prior to removal of this action based on a genuine
10 concern that Plaintiff might try to quickly amend the Complaint in order to redraft the allegations
11 to try to avoid federal removal jurisdiction based on the presence of a federal question.
12 Schneider Decl. ¶ 6.

13 **V. CONCLUSION**

14 Defendants respectfully request the Court file a redacted version of Exhibit A to the
15 Notice of Removal in the public record and retain the unredacted version under seal.

16 A proposed order will be submitted to the Court concurrently.
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3 DATED: June 2, 2017

s/ Harry H. Schneider, Jr., WSBA No. 9404

HSchneider@perkinscoie.com

Susan E. Foster, WSBA No. 18030

SFoster@perkinscoie.com

Will Rava, WSBA No. 29948

WRava@perkinscoie.com

Perkins Coie LLP

1201 Third Avenue, Suite 4900

Seattle, WA 98101-3099

Telephone: 206.359.8000

Facsimile: 206.359.9000

Attorneys for Defendants Chihuly, Inc., Dale
Chihuly, and Leslie Chihuly

1 **CERTIFICATE OF SERVICE**

2 I certify that on June 2, 2017, I served the foregoing on the following attorney(s) of
3 record of record by the method(s) indicated:
4

5 Anne Bremner
6 Frey Buck, P.S.
7 1200 Fifth Avenue
8 Suite 1900
9 Seattle, WA 98101
10 abremner@freybuck.com
11 206-486-8000

— Via U.S. Mail, 1st Class, Postage Prepaid
XX Via Hand Delivery
— Via Overnight Delivery
— Via Facsimile
— Via Email

9 I certify under penalty of perjury that the foregoing is true and correct.

10 DATED this 2nd day of June, 2017.

11
12 s/ Harry H. Schneider, Jr., WSBA No. 9404
13 HSchneider@perkinscoie.com
14 Perkins Coie LLP
15 1201 Third Avenue, Suite 4900
16 Seattle, WA 98101-3099
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Attachment

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SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

MICHAEL MOI, an individual,

Plaintiff,

v.

CHIHULY STUDIO, INC., a Washington
corporation; DALE CHIHULY, individually and
as a married person; LESLIE CHIHULY,
individually and as a married person,

Defendants.

No.

COMPLAINT

PLAINTIFF MICHAEL MOI alleges as follows:

NATURE OF THE ACTION

Dale Chihuly's fame, in part, is due to his reputation as a prolific artist whose ambition, brilliance, and talent allow him to personally create massive volumes of work; there is a profound disconnect between the truth, however, and this carefully crafted image. Although Chihuly and his studio have tacitly acknowledged that for decades a team of glassblowers has produced his famed glasswork, the truth behind the creation of his paintings has been intentionally hidden. Hundreds of millions of dollars' worth of paintings have been created, exhibited and sold across the globe, all claimed to be the sole work of Chihuly. These paintings

1 have not only spread Chihuly's name to all corners of the earth, but they have also brought him
2 and his business great financial gain. Unlike artists such as Marilyn Minter, Jeff Koons, and
3 Takashi Murakami, whose use of well-credentialed and artistically trained assistants is visible,
4 well-documented, and transparent to the buying public, Dale Chihuly and the Chihuly Studio
5 have publicly maintained that his drawings, paintings, and prints are made by his own hand, and
6 that doing so plays a "very central role" to his creative process.¹ The reality is that the artist has
7 long relied on a collection of discreet and trusted individuals to work in the shadows to create the
8 drawings and paintings on paper, glass, Plexiglas, and canvas that bear his name. This small
9 group, which has never been publicly acknowledged, had two requirements: secrecy and
10 unwavering loyalty. For almost two decades, Michael Moi (hereafter "Moi") personified both.

11 From the years 1999-2014, Moi participated in myriad clandestine painting sessions.
12 Importantly, at no point in this long relationship did Moi ever get paid for his effort, become an
13 employee, or sign an assignment of copyright, a "work for hire" agreement, or confidentiality
14 agreement. In lieu of payment for his years of creative contributions, Dale Chihuly repeatedly
15 and consistently promised Moi future compensation. Moi co-authored a large volume of visual
16 works that have been inaccurately credited solely to, and exploited solely for the economic
17 benefit of, Dale Chihuly, Chihuly Studio, and Chihuly Workshop (collectively, "Chihuly"), all in
18 breach of the agreement Chihuly had with its shadow painting team. Moi now demands a
19 complete accounting and payment of proceeds rightly due to him under the Copyright Act and
20 rightful attribution per the Visual Artists Rights Act ("VARA").

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23 ¹ Nathan Kernan, "The Butterfly and the Spider", in *Chihuly Drawings* (2014).

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I. PARTIES

1.1 Plaintiff Michael Moi is a resident of King County, Washington and resides within the Western District of Washington.

1.2 Defendant Chihuly Studio, Inc., ("Studio") is, on information and belief, a Washington Corporation doing business in King County, Washington, within the Western District of Washington.

1.3 Defendant Dale Chihuly is a resident of King County, Washington, is an owner of the Studio and exercises control over the activities of the studio. He resides within the Western District of Washington.

1.4 Defendant Leslie Chihuly (hereafter "Leslie") is a resident of King County, Washington, an owner of the Studio and acts as its president. Leslie and Dale Chihuly are husband and wife. She resides within the Western District of Washington.

II. JURISDICTION AND VENUE

2.1 This court has jurisdiction over the parties and subject matter of this lawsuit.

2.2 Venue is proper in King County Superior Court.

III. FACTUAL ALLEGATIONS

3.1 Michael Moi first became acquainted with Dale Chihuly in the fall of 1999 on Chihuly's boat the *Meteor*. Moi met the artist through Billy O'Neill ("O'Neill"), then an employee at the Salmon Bay Boat Yard who also worked as a boat skipper for Chihuly. O'Neill left his position at Salmon Bay to become Chihuly's assistant soon after Moi's introduction to the artist.

1 3.2 Moi was initially hired as an independent contractor for building and
2 construction-related contract work. These short-term projects, ranging from roof replacements on
3 several of Chihuly's properties to decommissioning an oil tank at Chihuly's then-girlfriend's
4 house, were all clearly defined in scope and were identified in terms of specific services and
5 expected deliverables. Moi received proper compensation for all contracted work.

6 3.3 Shortly after his initial introduction to Dale Chihuly, Moi began receiving calls
7 from the artist, his executive assistants and/or O'Neill requesting Moi's attendance at Chihuly's
8 frequent and impromptu painting sessions. Due to Chihuly's often manic requests, O'Neill and
9 his assistants were frequently deluged with the artist's overwhelming number of demands. Moi
10 and others were brought in to fill the gaps.

11 3.4 Dale Chihuly's painting sessions, though frenzied, resulted in what the artist
12 wanted most: an efficient production line generating a large volume of paintings. Before each
13 session, long lines of heavy stock French watercolor paper would be laid out, edge to edge, in as
14 many rows as the Boathouse's outdoor deck or indoor painting studio (known as the "Blue
15 Room") would allow. Painting on the deck required several preparatory steps. First, the
16 watercolor paper had to be carefully tacked down in each corner to prevent Lake Union's
17 unpredictable wind from overturning any completed works. Second, foam mops and five-gallon
18 plastic buckets, half-filled with water, were placed among the rows of blank paper. Third, large
19 grey metal rolling carts containing Chihuly's custom-made Golden acrylic paints would be
20 positioned and readied for use (Moi had a great deal of this same custom Chihuly paint in his
21 possession). In the warmer months, it was not uncommon for two painting sessions to be
22 scheduled per day - one in the morning and another in the evening. The large amount of prep
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1 work and support required for these painting sessions resulted in Moi being on ever-ready
2 standby should Chihuly or O'Neill call him.

3 3.5 Once begun, the painting sessions were intensely focused. Working just a few
4 steps ahead of Chihuly, O'Neill and Moi would pour paint directly onto the long line of blank
5 paper and begin to "mop out" the background colors. Chihuly would follow on their heels with
6 dots, drips and lines of his own as they worked their way down the row of white paper. Once
7 Moi created the background and body of the piece, Chihuly or O'Neill would then add additional
8 touches: lip wraps, body wraps, reeds, or other abstract forms.

9 3.6 The final step was completed by adding Chihuly's recognizable signature to the
10 bottom of each painting. This process was repeated for each row of paper until everything had
11 been completed.

12 3.7 If Chihuly desired a second painting session, the entire preparatory process would
13 be repeated, and the still-drying paintings would have to be untacked from the wooden deck and
14 taken inside through the small "Blue Room" deck door to be placed on a drying rack.

15 3.8 To facilitate the additional paint sessions and increased volume of work, Moi
16 installed additional deck lighting for longer painting sessions during the summer months. He also
17 brought in his long-handled roofing blow-torch to gently heat and "set" the wet paint so the
18 finished works could be removed from the deck to make room for the evening paint session.

19 3.9 Chihuly encouraged Moi's creative additions and ideas. For example, one session
20 close to Halloween in the early 2000s, Moi conceived of a "Pumpkin" series, and created large
21 orange forms on white and black backgrounds. Both Moi and Chihuly created "faces" for each
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Pumpkin drawing in white or black paint. Chihuly was enthusiastic about the series and spent the next several paint sessions creating additional Pumpkin drawings.



Images of the "Pumpkin" series used on Chihuly's Facebook page for posts in 2013, 2014, and 2015.

3.10 The paint sessions continued in this manner until approximately 2005, differing only on the rare occasions where Chihuly brought in additional help. Chihuly would occasionally bring in photographers and videographers to shoot painting sessions. Moi believes two of these people were studio staff. Others also documented the process through polaroid photographs and other forms.

3.11 In general, Studio staff and the glassblowers working downstairs were prohibited from accessing the deck, the Blue Room, and Chihuly's private quarters, but Moi was granted unfettered access by Chihuly. While he acknowledged Moi's contributions to his artwork, this acknowledgment was private; Chihuly sought to maintain the illusion both internally and to the public that he was the sole creator.

3.12 One of the more tedious, yet necessary tasks in Chihuly's growing business was applying his signature to the thousands of highly profitable Portland Press (now titled "Chihuly

1 Workshop”) edition glass works, prints, publications and DVDs. When Chihuly was unwilling or
2 unable to complete the task of signing the voluminous output he would call on Moi and O’Neill.
3 Moi assisted O’Neill, holding Portland Press glass edition pieces so O’Neill could sign Chihuly’s
4 signature on each work with a Dremel tool.

5 3.13 Chihuly’s trust in and dependence on Moi grew over time, and Moi considered
6 Chihuly a close friend. As this friendship and bond deepened, it was a normal occurrence for
7 Moi to frequent Chihuly’s private living quarters while the artist soaked in and made phone calls
8 from the white claw foot tub in his library/bedroom. Moi and Chihuly socialized often, sharing
9 many meals together in Chihuly’s upstairs kitchen and drinking heavily while Chihuly
10 entertained multiple girlfriends. The two men also shared Human Growth Hormone (HGH) and
11 Vitamin B shots provided by Chihuly’s doctor.

12 3.14 Chihuly’s up and down manic cycles were a constant during this same period. At
13 one point, Chihuly became convinced O’Neill and Leslie Jackson (then Chihuly’s on/off
14 girlfriend and mother of his son, Jackson) were conspiring against him. As a result, Chihuly
15 entrusted Moi with original faxes, legal documents, and other correspondence and items of a
16 personal nature. Chihuly adamantly instructed Moi to keep these documents safely hidden.
17 Chihuly told Moi he would “take care of him” at a later point in time by reaffirming Moi’s
18 contributions to the Chihuly Studio. Chihuly assured Moi that the registration and sales
19 departments kept great records, and that Moi’s share of the profits on the works they created
20 could be readily ascertained and would be awarded at a later date. Specifically, Chihuly
21 frequently promised and assured Moi that when the Studio wound down its operations, Moi
22 would be properly financially compensated for his contributions to Chihuly’s artwork as well as
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1 his numerous contributions to the Studio. Given that Chihuly and Moi had worked together for
2 years, that Chihuly had entrusted Moi with highly personal and private effects as a show of his
3 trust and confidence in their agreement, and given Moi's belief in Chihuly's integrity and word,
4 Moi reasonably relied upon Chihuly's representations and promises.

5 3.15 In late 2005, Moi's wife of twenty-two years unexpectedly passed away.
6 Devastated, Moi went into a semi-retirement to deal with his personal loss. Moi lost contact with
7 Chihuly for the next two years.

8 3.16 In early summer of 2007, Moi was asked by O'Neill to assist Chihuly at his paint
9 studio, now located at his Ballard facility, in the creation of a new body of work. This was due to
10 Moi's previous experience as a professional roofer, where he had routinely worked with
11 combustible and flammable materials. Moi once again brought in his long and short blow
12 torches, this time to "burn" thick layers of paint and metallic dust on works now being created by
13 Chihuly, O'Neill, Piper O'Neill, and Damien Villarreal. Moi attended approximately four more
14 weekend painting sessions that year to "burn" and "dust" metallic pigment on backgrounds and
15 to move finished paintings. Moi continued to come in sporadically, approximately three to four
16 times per year over the next three years.

17 3.17 In 2011, Moi resumed his consistent involvement with Chihuly and the Chihuly
18 Studio. Moi had completed a home remodel for Billy O'Neill, now Vice President for the
19 Chihuly Studio. Chihuly visited O'Neill's home and then called Moi to comment on how
20 impressed he was with Moi's work. Chihuly asked Moi to resume the construction work he had
21 previously done for him.
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1 3.18 Chihuly had by that time hired Victor Humeniuk as facilities manager for the
2 Chihuly Studio. Humeniuk had been the manager of the Salmon Bay Boat Yard and had there
3 met Billy O'Neill. O'Neill later hired Humeniuk to work at the Chihuly Studio. Although his
4 employment was terminated due to allegations of theft, Humeniuk was subsequently re-hired
5 years later in the role of facilities manager.

6 3.19 From that point forward, at Chihuly's request, Humeniuk began hiring Moi and
7 Moi's new wife, Kellie Moi for various jobs in Chihuly's buildings in Ballard, Lake Union, and
8 Tacoma, as well as Dale and Leslie Jackson Chihuly's vacation home in Indianola, Washington.

9 3.20 From 2012 onward, the Studio once again called upon Moi with increased
10 frequency to assist with the execution of large Plexiglas paintings. As the size, scale, and
11 complexity of Chihuly's paintings had increased, so had the process required to complete them.
12 Now infirm, Chihuly contributed little to the conception or creation process. Yet, despite his
13 incapacity, he still demanded that high volumes of the lucrative work be produced. At Chihuly's
14 instruction, O'Neill was now directing the process - a veritable production line pumping out
15 large quantities of works the Studio attributed to Chihuly's own hand and intended primarily for
16 Chihuly's London gallery, Halcyon.

17 3.21 By 2014, the demand in London for large scale "quads" and huge Plexiglas "light
18 drawings" had increased dramatically. Large numbers of pieces would be laid out on the
19 painting room floor so tightly that Moi remembers Chihuly reprimanding him and O'Neill for
20 leaving footprints on finished drawings. Creating such large-scale works was physically
21 demanding, yet the nature of their creation still demanded complete secrecy and discretion, even
22 from Chihuly's own staff. On multiple occasions in 2014, the Studio asked Moi to come to
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1 Chihuly's Ballard paint studio in the evenings or weekends to paint with Chihuly and O'Neill.
2 Chihuly's involvement was limited to signing completed works; he played no role in the creative
3 process. Moi painted backgrounds and added drips, dashes and lines to innumerable drawings,
4 paintings, and Plexiglas panels.



14 Michael Moi's paint splattered pants and shoes from Chihuly's surreptitious painting sessions.

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16 3.22 During this timeframe, painting session regulars Damien Villarreal and Piper
17 O'Neill were occasionally unable to attend scheduled sessions. When one or both were unable to
18 attend, Chihuly or O'Neill would ask Moi to assist. Other non-studio persons would also
19 occasionally be called in if Villarreal and/or Mrs. O'Neill were absent. Moi remembers the
20 following participants: Mike Robinson, Eric Dunham, Luanna Dunham, Mike Sofie, Squire
21 Broel, Roger Ligrano, Ricky Andrews. Chihuly's physical involvement in the painting process
22 was virtually non-existent during the past decade.

1 3.23 In January 2015, O'Neill was terminated from his employment at Chihuly Studio.
2 From that point forward, Moi's connection with both the Studio and Chihuly himself diminished
3 rapidly. Moi was confused by this but assumed Chihuly would eventually resume the painting
4 sessions and that Moi's other construction/maintenance contract work would continue.

5 3.24 On September 26, 2016, Moi finally learned the reason for Chihuly's unexplained
6 distance. That day, after lunch at a nearby restaurant, Mr. and Mrs. Moi stopped by the Chihuly
7 Boathouse for an impromptu visit to the hotshop. As they pulled up, Chihuly and his driver and
8 janitor, Scott Roswell, were headed towards Roswell's company truck. Chihuly and Moi chatted
9 for a few minutes. As he departed, Chihuly half-heartedly suggested that Moi call Humeniuk to
10 inquire about work on several of Chihuly's pending projects.

11 3.25 After Chihuly and Roswell left, the Moises stayed behind to talk to Studio
12 employee, Eddie Remaly. Remaly told Moi that the reason he had suffered sharply curtailed
13 work with the Studio was due to Moi's relationship with O'Neill. Remaly stated that O'Neill had
14 sued the Chihuly Studio. Moi knew O'Neill had been fired, but he was still unsure why his
15 friendship with O'Neill had resulted in his own apparent expulsion from the studio.

16 3.26 On December 24, 2016, Moi finally heard the full story. Moi had contacted
17 Humeniuk for advice regarding a vintage car Moi intended to restore. [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED].

8 3.27 Humeniuk further informed Moi that since settling with the O'Neills and
9 Villarreal, the Chihuly Studio had already replaced the former secret painting team with a new
10 group of local artists and the production process was continuing just as it had before. However,
11 Humeniuk said that Chihuly himself hardly ever came to the Studio anymore and that his wife
12 was now running the Studio.

13 3.28 Because Leslie Chihuly had no role in the creative process during the seventeen
14 years Moi had interacted with Chihuly and wasn't involved in the conversations related to the
15 terms of Moi's delayed future compensation, Moi realized Chihuly had intentionally misled him,
16 and that neither Chihuly nor the Chihuly Studio was going to compensate him for his years of
17 painting work as promised. The information gained from his phone conversation with Humeniuk
18 verified that Chihuly was repudiating Moi's rights, rights he gained through justifiable and
19 detrimental reliance on Chihuly's specific promises and Chihuly's word.

20 3.29 From the onset of Moi's involvement in the creative process, Chihuly had said
21 that the involvement of Moi and other people in the painting process had to be kept secret or the
22 drawings would have no value. Chihuly often joked about the unsophisticated nature of his
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collectors and that they were only concerned with "bright colors and my signature". Chihuly assured Moi that despite the need for secrecy, his registration department had taken steps to document Moi's involvement, and it would be easy to quantify Moi's contributions for the sake of rightful compensation. Chihuly told Moi that he would make sure Moi was properly compensated at the right time.

IV. CAUSES OF ACTION

4.1 Equitable Estoppel/Toiling.

4.1.1 Based upon Defendants' promises and assurances and Plaintiff's justifiable reliance on same, Defendants must be estopped from asserting a statute of limitations defense on any claim in this action.

4.1.2 Defendants acted in bad faith, deceiving Plaintiff, and made false assurances to him that Plaintiff could not have discovered in the exercise of reasonable care. The detail and intricacy of Defendant Chihuly's promises and assurances, his close relationship with the Plaintiff and his consistent treatment of the Plaintiff caused Plaintiff to justifiably rely on Chihuly's promises. Equitable tolling is necessary to prevent injustice.

4.1.3 Moreover, Defendants' denial of Plaintiff's claims is inconsistent with Defendant Chihuly's promises and assurances. Because of Plaintiff's justifiable reliance on Chihuly's promises and assurances, he was prohibited from diligently pursuing his legal remedies, on the faith of Chihuly's promises and assurances. Defendants must be equitably estopped from asserting a statute of limitations defense as it is necessary to prevent a manifest injustice.

4.2 Promissory Estoppel/Detrimental Reliance.

1 4.2.1 Defendants made a promise to pay Plaintiff for his services at a later date.
2 Defendants should have reasonably expected such promise would cause Plaintiff to change
3 position by rendering services to Defendant. Plaintiff was justified in relying on Defendants'
4 promise; plaintiff materially changed his position to his financial detriment in reliance on such
5 promise. Injustice can be avoided only if Defendant's promise is enforced.

6 4.2.2 Plaintiff is entitled to judgment under the theory of Promissory
7 Estoppel/Detrimental Reliance in an amount to be proven at trial.

8 4.3 Declaratory Judgment of Co-Authorship and Co-Ownership of Joint Works.

9 4.3.1 Plaintiff Moi repeats and incorporates by this reference each and every
10 allegation set forth in Paragraphs 1 through 4.3, inclusive.

11 4.3.2 There is a real and actual controversy.

12 4.3.3 Plaintiff Moi authored original artistic works with Defendant Chihuly and
13 others between 1999 and 2014, including drawings and paintings on paper, glass, Plexiglas and
14 canvas (collectively, the "Joint Works").

15 4.3.4 Plaintiff Moi's authorship included conceiving and executing the Joint
16 Works. Those contributions were independently copyrightable and represented original artistic
17 expression. Moi and Defendant Chihuly intended their contributions to be merged into
18 inseparable or interdependent parts of a unitary whole. As such, the works are joint works under
19 the Copyright Act, 17 U.S.C. §101, *et seq.*

20 4.3.5 The Joint Works are original works subject to the rights and protections
21 under the Copyright Act, 17 U.S.C. § 101, *et seq.*

22 4.3.6 Plaintiff Moi is the co-owner of the Joint Works.
23

1 4.3.7 Plaintiff Moi is entitled to an equal undivided ownership interest in each
2 of the Joint Works, including the copyrights in and to each of the Joint Works.

3 4.3.8 Plaintiff Moi was never an employee of Defendants, never agreed in a
4 signed writing that the Joint Works should be considered works made for hire, and never
5 assigned or transferred any rights in and to the Joint Works or the copyrights in the Joint Works.

6 4.3.9 Defendants have repudiated Plaintiff Moi's co-ownership of the Joint
7 Works.

8 4.3.10 By virtue of the foregoing, an actual and justiciable controversy exists
9 between Plaintiff Moi and Defendants concerning Moi's status as a co-author and co-owner of
10 the Joint Works.

11 4.3.11 Accordingly, Plaintiff Moi is entitled to a declaration that he is the co-
12 author and co-owner of the Joint Works, and owns an equal undivided interest in each of the
13 Joint Works.

14 4.4 Accounting of Revenue and Imposition of Constructive Trust.

15 4.4.1 Plaintiff Moi repeats and incorporates by this reference each and every
16 allegation set forth in Paragraphs 1 through 4.4, inclusive.

17 4.4.2 Plaintiff Moi is informed and believes, and based thereon alleges, that
18 Defendants have and are continuing to receive payments from the sale, use or other exploitation
19 of the Joint Works.

20 4.4.3 Plaintiff Moi is entitled to an accounting of all revenues received or
21 derived by Defendants from their sale, use or other exploitation of the Joint Works.

22 4.4.4 To the extent that Defendants have received or will receive any revenues
23

1 as a result of their sale, use or other exploitation of the Joint Works, Defendants hold those
2 revenues in trust for Plaintiff Moi, pending an accounting and distribution to Moi for his equal
3 undivided interest in the Joint Works.

4 4.5 Injunctive Relief Under VARA.

5 4.5.1 Plaintiff Moi repeats and incorporates by this reference each and every
6 allegation set forth in Paragraphs 1 through 4.5, inclusive.

7 4.5.2 The Joint Works are works of visual art under 17 U.S.C. § 101 and 17
8 U.S.C. § 106A.

9 4.5.3 Plaintiff Moi is an author of the Joint Works.

10 4.5.4 Plaintiff Moi never waived his right to claim authorship of the Joint
11 Works.

12 4.5.5 Accordingly, Plaintiff Moi is entitled to claim authorship of the Joint
13 Works under 17 U.S.C. § 106A(a)(1)(A).

14 4.5.6 Plaintiff Moi is entitled to temporary, preliminary and permanent
15 injunctive relief restraining and enjoining defendants from denying Plaintiff Moi's authorship of
16 the Joint Works or claiming an interest inconsistent with Moi's right to claim authorship of the
17 Joint Works.

18 4.5.7 Additionally, Plaintiff Moi is entitled to remedial injunctive relief
19 correcting any misstatements or misrepresentations by Defendants regarding Moi's authorship of
20 the Joint Works, including any claims that those works were solely authored by Defendant
21 Chihuly.

1 **V. PRAYER FOR RELIEF**

2 UPON THESE ALLEGATIONS, Plaintiff Moi prays for the following relief:

3 A. That the Court enter a declaratory judgment that Plaintiff Moi authored original
4 artistic works with Defendant Chihuly and others between 1999 and 2014.

5 B. That the Court enter a declaratory judgment that each of the works co-authored by
6 Plaintiff Moi is a joint work under the Copyright Act, 17 U.S.C. §101.

7 C. That the Court enter a declaratory judgment that Plaintiff Moi was not an
8 employee of Defendants within the meaning of 17 U.S.C. §101, and that the works he co-
9 authored are not works made for hire thereunder.

10 D. That the Court enter a declaratory judgment that Plaintiff Moi owns an equal
11 undivided interest in each of the works he co-authored, including the copyrights in and to each of
12 the works.

13 E. That the Court order Defendants to account to Plaintiff Moi for all revenues or
14 other benefits they received or derived from their sale, use or other exploitation of the works co-
15 authored by Moi.

16 F. That the Court enter an order declaring that Defendants hold in trust, as
17 constructive trustees for the benefit of Plaintiff Moi, all revenues or other benefits received or
18 derived from their sale, use or other exploitation of the works co-authored by Moi.

19 G. That the Court enter a declaratory judgment that the works co-authored by Moi
20 are works of visual art 17 U.S.C. § 101 and 17 U.S.C. § 106A.

21 H. That the Court enter a declaratory judgment that Plaintiff Moi never waived his
22 rights under 17 U.S.C. § 106A.

1 I. That the Court enter a declaratory judgment, pursuant to 17 U.S.C. §
2 106A(a)(1)(A), that Plaintiff Moi is entitled to claim authorship of the works he co-authored.

3 J. That the Court enter an order restraining and enjoining Defendants from denying
4 Plaintiff Moi's authorship of the works he co-authored or claiming an interest inconsistent with
5 Moi's right to claim authorship of the works.

6 K. That the Court enter an order requiring Defendants to provide corrective or
7 remedial notice to any persons or entities to whom Defendants have denied Plaintiff Moi's
8 authorship of the works he co-authored, or to whom Defendants have claimed an interest
9 inconsistent with Moi's right of authorship, including any claims that those works were solely
10 authored by Defendant Chihuly.

11 L. That the Court order Defendants, pursuant to 17 U.S.C. §§ 504(b) and (c)(1), to
12 pay actual or statutory damages to Plaintiff Moi, and any profits of received by Defendants that
13 are attributable to Defendants' infringements and, pursuant to 17 U.S.C. § 504(c)(2), enhanced
14 damages for Defendants' willful infringements of copyrights;

15 M. That the Court order Defendants, pursuant to 17 U.S.C. § 505, to pay full costs
16 and reasonable attorney's fees;

17 N. That the Court order pre- and post-judgment interest on the amount of any award
18 to Plaintiff Moi.

19 O. That the Court grant to Plaintiff Moi such other and additional relief as is just and
20 proper.

21 VI. JURY DEMAND

22 Plaintiff Moi demands trial by jury of all issues so triable.
23

1
2 DATED this 2nd day of May, 2017.

3 FREY BUCK, P.S.
4

5 By: s/Anne Bremner
6 Anne Bremner, WSBA #13269
7 Attorney for Plaintiff
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1 **Certificate of Service**

2 The undersigned certifies under the penalty of perjury according to the laws of the United
3 States and the State of Washington that on this date I caused to be served in the manner noted
below a copy of this document entitled COMPLAINT on the following individuals:

4 Susan Foster
5 Harry Schneider
6 Perkins Coie
7 1201 Third Avenue, Suite 4900
8 Seattle, WA 98101
9 (206) 359-8000
10 HSchneider@perkinscoie.com
11 *Attorney for Defendants*

12
13
14 ☐ Via Facsimile
15 ☐ Via First Class Mail
16 ☒ Via Messenger
17 ☐ Via Electronic Mail

18 DATED this 2nd day of May, 2017, at Seattle, Washington.

19 s/ Lia Maria Fulgaro

20 Lia Maria Fulgaro
21 Paralegal
22
23